

DEPARTMENT OF TAXATION

Amendments to Chapter 18-251
Hawaii Administrative Rules

June 28, 2002

SUMMARY

1. §18-251-1-03 is amended.
2. §18-251-2-01 is amended
3. §18-251-2-03 is amended.
4. §18-251-4-02 is repealed.
5. §18-251-11-01 is repealed.

§18-251-1-03 "Rental motor vehicle" or "vehicle", defined. (a) Except as otherwise provided in this section, as used in this chapter, "rental motor vehicle" or "vehicle" means every vehicle which is:

- (1) Self-propelled; or propelled by electric power but which is not operated upon rails;
- (2) Designed to carry seventeen passengers or fewer; and
- (3) Rented or leased or offered for rent or lease in this State, whether for personal or commercial use, for a period of six months or less.

"Car", "passenger van", and similar terms may be used to designate a "rental motor vehicle" or "vehicle" in the examples set forth in this chapter.

Example: ABC Rent-A-Car (ABC) rents cars, passenger vans, and jeeps to visitors in Hawaii and residents who occasionally need an extra car. The vehicles are rarely rented for periods longer than six months; however, ABC sometimes receives a request for a longer rental period. ABC's vehicles are subject to the rental motor vehicle surcharge tax, except rentals or leases which are for longer than six months.

Example: XYZ Wheels rents motorcycles and bicycles. The motorcycles are subject to the surcharge tax. Because bicycles are not self-propelled, however, they are not subject to the rental motor vehicle surcharge tax.

(b) "Rental motor vehicle" or "vehicle" shall not include:

- (1) Vehicles, which are not governed by chapter 286, HRS, and do not use the public highways; and
- (2) Mopeds, as defined in section 286-2, HRS.

Example: DEF Resort (DEF) rents mopeds and golf carts to its guests for use on the resort premises, which include two golf

courses. The mopeds, which are specifically excluded, and golf carts, which are not registered under chapter 286, HRS, and do not use the public highways, are not subject to the rental motor vehicle surcharge tax.

- (3) Any trucks, truck-tractors, tractor-semitrailer combinations, or truck-trailer combinations, with:
 - (A) A manufacturer's nominal carrying capacity of one thousand pounds or more; and
 - (B) A barrier or separation between the operator's compartment and the cargo area.

Example: Construction Equipment Company (CEC) leases heavy equipment and vehicles used to transport construction equipment to construction companies for use on their projects. All of CEC's equipment and vehicles are trucks, truck-tractors, tractor-semitrailer combinations, or truck-trailer combinations of one thousand pounds (one-half ton) or more capacity or larger and are never leased for periods longer than six months. CEC's vehicles are exempt from the tax.

- (4) Cargo vans with no more than two seats, including the driver's seat; provided that vans with recreational vehicle converter packages and vans with quick release passenger seats shall not be classified as cargo vans.

Example: DEF Rentals (DEF) rents cargo vans of all sizes to people and businesses moving to new locations; none of these cargo vans are rented for more than a few weeks at

a time. The cargo vans are exempt from the tax.

Example: Do-It-Yourself Rentals (Do-It-Yourself) rents cargo vans. Most of Do-It-Yourself's vans are large cargo vans with carrying capacities of 1,500 pounds or more. Do-It-Yourself also rents six passenger vans because some of the company's customers prefer smaller vans. The six passenger vans are equipped with quick release seats. Do-It-Yourself has removed all of the passenger vans' quick release seats to allow for the transportation of cargo; only the driver and the passenger seat next to the driver's seat remain. Although Do-It-Yourself only rents these converted vans for transporting cargo, the vans are nevertheless passenger vans (whether temporarily or permanently converted), not cargo vans, and, Do-It-Yourself's six converted passenger vans, therefore, are subject to the rental motor vehicle surcharge tax.

- (5) A motor vehicle or vehicle used by businesses whose services provide a driver with the motor vehicle or vehicle. A driver is a person who drives or is in actual physical control of the motor vehicle or vehicle or who is exercising control or steering a vehicle being towed or pushed by a motor vehicle or vehicle.

Example 1: ABC Cabs (ABC) provides taxi and limousine service to its customers. On occasion, a customer will hire a car (with driver) for the whole day. ABC's service includes a driver, therefore, its vehicles are not subject to the rental motor vehicle surcharge tax.

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Example 2: Super Service (Super) provides limousine service, using stretch limousines with passenger capacities of under eight persons and passenger vans with passenger capacities between eight to twenty-five persons. Because Super's service includes a driver, its stretch limousines are not subject to the rental motor vehicle surcharge tax. Super's passenger vans, however, are subject to the tour vehicle surcharge tax set forth in section 18-251-2-06. [Eff 1/27/92; am 1/2/93; am _____] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-1)

§18-251-2-01 Surcharge tax on rental motor vehicles or vehicles; imposition and rate. There is levied on the lessor, and shall be assessed and collected each month, a rental motor vehicle surcharge tax at the rate established in section 251-2, HRS. The rental motor vehicle surcharge tax shall be levied upon the lessor; provided that the tax shall not be levied on the lessor during the period September 1, 1999, to August 31, 2007, if:

- (1) The lessor is renting the vehicle to replace a vehicle of the lessee that is being repaired; and
- (2) The repair order for the vehicle is retained by the lessor for four years for verification purposes.

Example: ABC Rentals rents a car to Mr. Cruise for four days, from December 30, 2000, to January 2, 2001. The surcharge tax due is \$12. [Eff 1/27/92; am] (Auth: HRS §§231-3(9), 251-15(b)) (Imp: HRS §251-2)

§18-251-2-03 Surcharge tax on rental motor vehicles or vehicles; six-month time period. (a) If the motor vehicle or vehicle is customarily rented or leased for six months or less, it shall be presumed that the motor vehicle or vehicle is rented or leased and subject to this chapter.

(b) No presumption applies if the motor vehicle or vehicle is rented or leased for a period longer than six months, and the burden of proof remains with the lessor. If the lessor is able to prove to the director's satisfaction that the motor vehicle or vehicle is rented or leased for more than six months, the rental motor vehicle surcharge tax shall not be imposed.

(c) If a lease of more than six months is terminated before one-hundred eighty days have expired, the motor vehicle or vehicle may not be deemed to be subject to the rental motor vehicle surcharge tax.

Example: ABC Leasing Company leases cars for periods of one year or longer. Ms. Rita Renter, who is an out-of-state consultant on a long-term project in Hawaii, leases a car for a one-year term. The project, however, hits a snag two weeks after it gets underway and is postponed to the next year. Since her services are no longer needed, Ms. Renter returns the car to ABC Leasing Company. Although the car actually was rented for less than a full six months, the rental motor vehicle surcharge tax does not apply.

(d) If the department finds that a lessor is continuously entering into leases of longer than six months and the lessees are continuously terminating these leases, the burden is upon the lessor to show that the operation is not a surcharge tax avoidance scheme and subject to the rental motor vehicle surcharge tax.

(e) When a vehicle is rented or leased under separate month-to-month contracts for a period over six months, only an intention to rent the vehicle for one month at a time arises. The rental motor vehicle

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surcharge tax is imposed in this situation.

If, however, the lessor is able to show that the month-to-month rental or lease contracts conform to all of the following criteria, an intent to rent or lease for more than six months may be found for the lessor and the lessor will not be subject to the rental motor vehicle surcharge tax:

- (1) The monthly rental or lease contracts are continuous with less than 24 hours elapsed time between the expiration of one contract and the next monthly contract;
- (2) The monthly rental or lease contracts are for consecutive days without any breaks for a continuous rental or lease period totaling more than six months; and
- (3) The lessor has written documentation to substantiate the continuous rental or lease of the vehicle for more than six months as provided in paragraphs (1) and (2).

The rental motor vehicle surcharge tax will not be imposed on the lessor for the seventh month and each month thereafter on the rental or lease of the vehicle under month-to-month contracts which conform with all of the criteria set forth above. The rental motor vehicle surcharge tax, nevertheless, is applicable for the preceding six-month period. [Eff 1/ 27/92;

am] (Auth: HRS §§231-3(9), 251-15(b))
(Imp: HRS §251-2)

§18-251-4-02

§18-251-4-02 REPEALED. [Eff 1/27/92;
R]

§18-251-11-01

§18-251-11-01 REPEALED. [Eff 1/27/92;
R]

DEPARTMENT OF TAXATION

Amendments to chapter 18-251, Hawaii Administrative Rules, on the summary page, dated June 28, 2002, were adopted on June 28, 2002, after public notice was published in the Honolulu Star Bulletin, The Garden Island, The Maui News, Hawaii Tribune-Herald, and West Hawaii Today on May 28, 2002.

These amendments shall take effect ten days after filing with the Office of the Lieutenant Governor.

MARIE Y. OKAMURA
Director of Taxation

APPROVED:

BENJAMIN J. CAYETANO
Governor
State of Hawaii

Date: _____

APPROVED AS TO FORM:

Deputy Attorney General

Filed